

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 017512

ORIGIN NEA-10

INFO OCT-01 AS-01 ISO-00 EB-08 COME-00 INR-07 INRE-00
(ISO) R

DRAFTED BY: NEA/EGY:CAKENNEDY:SEB

APPROVED BY: NEA/EGY:ONEWBERRY

-----271824Z 071393 /10/46

O 261727Z JAN 77

FM SECSTATE WASHDC

TO AMEMBASSY CAIRO IMMEDIATE

INFO AMCONSUL ALEXANDRIA IMMEDIATE

LIMITED OFFICIAL USE STATE 017512

C O R R E C T E D C O P Y (P A R A D L I N E 5 O M I T T E D)

E.O. 11652: N/A

TAGS:BDIS EG US

SUBJECT: FIRST APPALCHIAN CORPORATION (FAC)

REF: A) CAIRO 1241; B) CAIRO 1391

1. FOLLOWING IS FAC RESPONSE TO QUESTIONS ASKED REFTEL A.

2. QUOTE:

A. FAC DID NOT RAISE OBJECTIONS WHEN CHEMICOKE FIRST REQUESTED LENGTH LIMITATIONS. WE LOOK UPON CHEMICOKE AS A "MOST FAVORED" CUSTOMER AND BEGAN A PROCESS IMMEDIATELY TO RESEARCH WHETHER CHARTERING SMALLER VESSELS WAS POSSIBLE.

BACKGROUND:

THE PROBLEM OF SIZE AROSE IN LATE AUGUST AFTER FARID HAD LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 017512

AGREED TO ACCEPT A VESSEL OF 842 FEET IN LENGTH (THE DEMETRIUS), AND THIS SHIP WAS CHARTERED AND ALREADY ENTERED INTO THE PORT OF NORFOLK AWAITING ITS TURN FOR LOADING. EVIDENTLY, AT THIS TIME, FARID WAS NOTIFIED BY THE PORT DIRECTOR OF ALEXANDRIA THAT VESSELS THIS SIZE WERE CAUSING PROBLEMS. BECAUSE OF FARID'S URGENT REQUEST (ATTACHMENT 1) AND IN THE INTERESTS OF SERVING OUR CUSTOMER, WE AGREED TO

DISMISS THE VESSEL DEMETRIOS AT HIS EXPENSE AND WOULD TRY

TO CHARTER A MUCH SMALLER ONE. WE THEN TOLD FARID WE WOULD TRY TO CONFORM TO THE SMALLER SIZE SPECIFIED IN HIS TELEX BUT NEVER AGREED TO SUCH A CONDITION AS PART OF OUR CONTRACT.

THE CONTRACT BETWEEN CHEMICOKE AND FAC CLEARLY STATES IN PARAGRAPH 18, "OTHER CONDITIONS," "...AMENDMENTS AND SUPPLEMENTS...ARE VALID ONLY IF... ARE AGREED UPON BY BOTH PARTIES IN WRITING BY AN EXCHANGE OF LETTERS." THERE WAS NEVER AN EXCHANGE OF LETTERS. A MATTER OF SUCH IMPORT AS RESTRICTION IN SIZE OF VESSELS WOULD AND COULD NOT BE HANDLED BY INTERPRETATION BY EITHER PARTY ESPECIALLY WHEN IT ENTAILED A CHANGE IN THE LETTER OF CREDIT TERMS. FARID KNOWS THIS. THE CHANGE WAS UNILATERAL. WE ARE ON RECORD REJECTING ANY IMPLICATION THAT WE EVER AGREED TO A CHANGE IN THE SIZE OF THE VESSEL.

WE ATTACH A COPY (ATTACHMENT 2) OF A CABLE WE SENT CHEMICOKE DATED SEPTEMBER 4 GIVING A SCHEDULE OF SHIPPING 90,000 TONS IN SEPTEMBER 1976 IN VESSELS WHICH WOULD CARRY 30,000 METRIC TONS EACH. THIS SCHEDULE WAS BASED ON VESSELS OF AT LEAST 685 FEET LOA, SINCE IT IS IMPOSSIBLE TO SHIP SUCH TONNAGE ON A SMALL VESSEL, AS FARID KNOWS VERY WELL. IT WAS AFTER THIS DATE FARID IMPOSED THE SIZE RESTRICTIONS IN THE LETTER OF CREDIT.

WE DID NOT WAIT A LONG TIME. WE RECEIVED NO WORD OF THE CHANGE OF CONDITIONS IN THE LETTER OF CREDIT UNTIL SEPTEMBER 15, 1976. (ATTACHMENT 3 IS A COPY OF AN EXTENSION IN THE LETTER OF CREDIT AND AN INSERTION OF RESTRICTIONS ON LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 017512

SIZE DATED SEPTEMBER 8. THIS WAS SENT TO RIGGS BY BANK AMERICA WHO, IN TURN, SENT IT ON TO US ABOUT THE 15TH OF SEPTEMBER.)

IN EARLY OCTOBER, AFTER THREE SHIPPING COMPANIES (WILLIAMS, ASTRID AND WALL) HAD BEEN TRYING UNSUCCESSFULLY TO FIND SMALL VESSELS, WE TRIED TO BRING THIS PROBLEM TO FARID'S ATTENTION. IT IS A MATTER OF RECORD THAT CHEMICOKE'S TELEX WAS NOT OPERATING THE FIRST THREE WEEKS OF OCTOBER. OUR AGENT WAS GOING TO BE IN CAIRO ON THE 15TH OF OCTOBER. SINCE CABLES SENT FROM THE U.S. TO HELWAN TAKE AT LEAST ONE WEEK TO BE DELIVERED INTO CHEMICOKE'S HANDS, WE GAVE MR. HABIB INSTRUCTIONS TO ASK FARID TO GIVE US A 10 LEEWAY ON THE LENGTH AND WIDTH OF THE VESSELS WHICH WOULD ENABLE US TO DELIVER COAL, ALSO, TO PROTEST THE UNILATERAL IMPOSITION OF SIZE IN THE LETTER OF CREDIT. AT THAT TIME, WE ALSO SENT CABLES TO FARID INDICATING OUR INABILITY TO GET THROUGH ON THE TELEX AND ASKED HIM TO SPEAK TO OUR AGENT WHO WAS AT THE SHERATON HOTEL.

B. AS NOTED ABOVE, WE DID ATTEMPT TO WORK OUT A 10 PCT SIZE LEEWAY. WE ALSO BROUGHT TO THE ATTENTION OF CHEMICOKE THAT SIZE RESTRICTIONS SEEMED TO BE AIMED ONLY AT US. WE NOTED OUR SHIPPERS HAD INFORMED US LARGER VESSELS WERE BEING ACCEPTED INTO ALEXANDRIA, AND FURNISHED THE NAMES OF THESE VESSELS TO CHEMICOKE. WHILE IN CAIRO, OUR AGENT WAS TOLD BY FARID THAT HE WOULD ALLOW FAC A 10 PCT LEEWAY IN VESSEL SIZE. HOWEVER, HE REFUSED TO ACKNOWLEDGE THIS IN A TELEX TO US OR TO REVISE THE LETTER OF CREDIT ACCORDINGLY. ON OCTOBER 29 (CHEMICOKE'S TELEX AGAIN NOT WORKING), WE CABLED FARID THAT TWO VESSELS WERE AVAILABLE TO US, ONE 645 FEET IN LENGTH AND 79 FEET IN BEAM AND THE OTHER MEETING THE LENGTH HE WANTED BUT WITH AN 81-FOOT BEAM; AND WE NEEDED HIS AGREEMENT SINCE THE LETTER OF CREDIT WOULD NOT ALLOW PAYMENT TO FAC WITHOUT REVISION. WE AGAIN SUGGESTED A GENERAL 10 PCT LEEWAY ON THE SIZE RESTRICTIONS BE GRANTED. WE RECEIVED NO REPLY TO THIS TELEX AND LOST LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 017512

BOTH VESSELS (ATTACHMENT 4).

C. A TELEX TO WHICH FARID REFERS INDICATES OUR WILLINGNESS TO CONFORM ONLY TO ONE VESSEL MEETING HIS SIZE SPECIFICATIONS AND NOT A GENERAL CHANGE. AGAIN, THIS WAS DONE IN THE SPIRIT OF COOPERATION WITH CHEMICOKE AT A TIME WHEN WE HAD NO KNOWLEDGE CHEMICOKE WAS RESTRICTING US WHILE ALLOWING OTHER SUPPLIERS TO USE LARGER VESSELS.

D. FARID IS CORRECT. A LETTER OF CREDIT CANNOT BE UNILATERALLY AMENDED. FARID'S ACTION IS A BREACH OF THE CONTRACT. THIS IS OUR CASE IN CHIEF. THE FACT IS, HOWEVER, THAT HE IMPOSED THIS UNILATERAL RESTRICTION. FAC HAS CONTINUED TO SEEK ITS REMOVAL WITHOUT RESORTING TO LITIGATION. FARID HAS BREACHED THE CONTRACT AS WE HAVE TELEXED CHEMICOKE A DOZEN TIMES.

E. FAC PROPOSED A SHIPPING SCHEDULE DURING MONTHS OF JULY AND AUGUST. SHIPPING WAS DELAYED FIRST BY THE ANNUAL TWO-WEEK MINERS' HOLIDAY EARLY IN JULY, FOLLOWED BY A FIVE TO SIX-WEEK WILD CAT STRIKE OF WHICH FARID WAS INFORMED (ATTACHMENT 5). WHEN THE STRIKE ENDED, WITH FARID'S CONCURRENCE, WE CHARTERED THE VESSEL DEMETRIOS AS NOTED ABOVE, LATER CANCELLED AT HIS URGING. IN SEPTEMBER, WE GAVE HIM THE NEW SCHEDULE FOR THREE SHIPMENTS, BUT HE THEN IMPOSED THE SIZE RESTRICTION PREVENTING US FROM SHIPPING. IT WAS DURING THIS PERIOD OF TIME (SEPTEMBER 25 TO OCTOBER 25) THAT WE BROUGHT TO FARID'S ATTENTION OUR STRONG DISAGREEMENT WITH THE UNILATERAL CHANGE MADE AND OUR SUGGESTION THAT WE BE GRANTED A 10 PCT LEEWAY IN SIZE.

BACKGROUND:

WHEN OUR AGENT WAS IN CAIRO, HE MET WITH THE UNDERSECRETARY OF THE MINISTRY OF INDUSTRY AND REQUESTED A 10 PCT LEEWAY. THE UNDERSECRETARY SPOKE TO FARID. HE AGREED THIS WAS NO PROBLEM BUT, AS NOTED ABOVE, HE DID NOT CONFIRM LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 05 STATE 017512

IN A TELEX TO US OR BY AMENDMENT TO THE LETTER OF CREDIT. IT WILL BE OF INTEREST TO YOU TO KNOW THAT A NEW TENDER HAS BEEN ANNOUNCED FOR FEBRUARY 1977. THE TENDER INCORPORATES A PROVISION ON THE SIZE OF SHIPS AND SPECIFIES THAT VESSELS UP TO 700 FEET WITH A 32-FOOT DRAFT AND NO BEAM RESTRICTION ARE PERMITTED FOR SHIPMENT OF COAL. THE 10 PCT LEEWAY WE ASKED, IF AGREED TO, WOULD HAVE AVOIDED ALL THIS AND THE CONTRACT WOULD HAVE LONG SINCE BEEN COMPLETED. END QUOTE.

3. DEPARTMENT POUCHING FAC RESPONSE AND REFERENCED ENCLOSURES FOR YOUR RECORDS.

4. COMMENT: BLACK IS APPARENTLY UNWILLING TO ADMIT POSSIBILITY OF TACTICAL ERROR IN "INVITING" AMENDMENT TO L/C. HE HAS NOT PROVIDED US TEXT OF TELEX REFERRED TO IN PARA 6A, REFTEL A, EVEN THOUGH IN CONVERSATION WITH NEA/EGY OFFICER HE SAID WORDING QUOTED WAS "NOT HIS TYPE OF LANGUAGE". BLACK SAYS HE CANNOT FIND THIS TELEX IN HIS FILE. RATHER, BLACK HAS TAKEN LEGAL POSITION THAT AMENDMENT WAS NOT AUTHORIZED IN MANNER SPECIFIED IN CONTRACT.

5. WE OFFER FOLLOWING THOUGHTS FOR YOUR CONSIDERATION. BOTH CHEMICOKE AND FAC APPARENTLY HAVE MADE MISTAKES IN EXECUTING PREVIOUS CONTRACT. FAC WOULD SAY THAT IT ACTED IN GOOD FAITH AND ANY MISTAKES MADE WERE DUE TO INEXPERIENCE IN INTERNATIONAL COMMERCIAL TRANSACTIONS, PARTICULARLY INEXPERIENCE IN EGYPTIAN STYLE COMMERCE. CHEMICOKE WOULD PROBABLY AGREE THAT FAC LACKS EXPERIENCE AND WAS TOO "FORMAL" IN ITS DEALINGS. COMMUNICATION BETWEEN TWO HAS BEEN POOR. DESPITE HARD FEELINGS WHICH MAY HAVE DEVELOPED BETWEEN TWO PARTIES, FAC COAL PRICES SEEM TO BE LOWER THAN OTHER SUPPLIERS. EGYPT SURELY COULD USE ANY COST SAVINGS FOR NEEDED IMPORTS. FOR INTERNATIONAL RELATIONS, COMMERCIAL AND OTHERWISE, IT WOULD BE DESIRABLE TO AVOID AN INTERNATIONAL ARBITRATION PROCEDURE. THEREFORE, BEST SOLUTION MIGHT BE TO GIVE FAC SECOND CHANCE AND ALLOW THEM LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 06 STATE 017512

TO BID ON NEW TENDER. AFTER PAST EXPERIENCE, IT IS LIKELY

ANY NEW CONTRACT WOULD BE EXECUTED WITH PRECISION. VANCE

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Sent Date: 26-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE017512
Document Source: CORE
Document Unique ID: 00
Drafter: NEA/EGY:CAKENNEDY:SEB
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770053-0667, D770028-0873
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770115/aaaaanjt.tel
Line Count: 225
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 41dadad0-c288-dd11-92da-001cc4696bcc
Office: ORIGIN NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 CAIRO 1241, 77 CAIRO 1391
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 21-Jan-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3493797
Secure: OPEN
Status: NATIVE
Subject: FIRST APPALCHIAN CORPORATION (FAC)
TAGS: BDIS, EG, US
To: CAIRO
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/41dadad0-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009